

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7125

Joint Petition of Level 3 Communications, LLC    )  
and WilTel Communications Group, LLC for        )  
Approval of Transfers of Control                    )

Order entered: 12/14/2005

**I. INTRODUCTION**

On November 4, 2005, Level 3 Communications, LLC ("Level 3") and WilTel Communications Group, LLC ("WilTel") (together the "Petitioners"), filed a Telecommunications Merger and/or Acquisition Request for Approval Form ("Application") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of the transfer of control of WilTel Communications, LLC ("Wiltel Comm"), the Vermont operating subsidiary of WilTel, to Level 3, and the transfer of control of Level 3 to Leucadia National Corp. ("Leucadia"), the ultimate parent corporation of WilTel.

On December 1, 2005, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfers of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Application without further investigation or hearing.

The Board has reviewed the Application and the accompanying documents and agrees that approval should be granted without hearing.

**II. FINDINGS OF FACT**

Based upon the Application and accompanying documents, we hereby make the following findings of fact.

1. Wililliams Communications, LLC was issued a Certificate of Public Good (CPG No.476) to provide telecommunications services in Vermont on May 18, 1999. The Board approved a name change from Williams Communications, LLC to WilTel Communications, LLC

on November 23, 2004. WilTel Comm is a subsidiary of WilTel, which is in turn a wholly-owned subsidiary of Leucadia. Application at 1; Exh. A.

2. Level 3 was issued a Certificate of Public Good to provide telecommunications services in Vermont in Docket No. 6195 issued on May 28, 1999. Application at 1.

3. Pursuant to a stock purchase agreement, Level 3 will acquire 100% of the stock of WilTel and thus a 100% indirect ownership of WilTel Comm. Another component of the transaction would allow Leucadia, the ultimate parent of WilTel, to acquire up to 19% ownership of Level 3's parent company, Level 3 Communications, Inc., and thus an indirect interest in Level 3. Application at Attachment 1; Exh A.

4. Following the transaction, both Level 3 and WilTel Comm will continue to operate under their respective current names and tariffs. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Application at 3; Exh. A.

5. The proposed transaction will promote the public interest by allowing the Petitioners to strengthen their ability to compete in the telecommunications market, ensuring the continued existence of telecommunications competition in Vermont. Application at Exh. A.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

After reviewing the Application, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in Level 3 acquiring a 100% ownership interest in the parent company of WilTel Comm. The transaction will also allow Leucadia, the ultimate parent of WilTel, to acquire up to 19% ownership of Level 3's parent company. We further conclude that the transfer of control will not affect the services that either WilTel Comm or Level 3 currently provide to customers in Vermont. WilTel Comm and Level 3 will continue to offer service at the same rates, terms and conditions. The proposed transaction may also allow the Petitioners to strengthen their operations, which may, in turn, result in enhanced competition among providers of telecommunications services in Vermont. The resulting transfers of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

#### **IV. CONCLUSIONS**

The transfers of control of Level 3 and WilTel Comm should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of WilTel Communications, LLC, will promote the public good and, therefore, is approved.
2. The transfer of control of Level 3 Communications, LLC, will promote the public good and, therefore, is approved.
3. Petitioner shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 14<sup>th</sup> day of December, 2005.

|                        |   |                |
|------------------------|---|----------------|
| <u>s/James Volz</u>    | ) |                |
|                        | ) | PUBLIC SERVICE |
|                        | ) |                |
| <u>s/David C. Coen</u> | ) | BOARD          |
|                        | ) |                |
|                        | ) | OF VERMONT     |
| <u>s/John D. Burke</u> | ) |                |

OFFICE OF THE CLERK

Filed: December 14, 2005

Attest: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*

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